

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re:)	Civil Action No. 05-11177
M3 POWER RAZOR SYSTEM)	(Lead Case)
MARKETING & SALES PRACTICES)	
LITIGATION)	
)	
THIS DOCUMENT RELATES TO:)	
)	
CARLOS CORRALES,)	Civil Action No. 05-12332
Plaintiff)	
v.)	
)	
THE GILLETTE CO.,)	
Defendant.)	
)	

**PLAINTIFF CORRALES' RESPONSE TO THE DEARMAN GROUP'S
APPLICATION FOR APPOINTMENT OF CLASS COUNSEL
AND PLAINTIFF CORRALES' REQUEST FOR A SCHEDULE FOR
SUBMITTAL OF APPLICATIONS FOR APPOINTMENT OF
PLAINTIFFS' STEERING COMMITTEE**

Plaintiff Corrales files this response to the Application for Appointment as Class Counsel filed by Plaintiffs Dearman, DeBiseglia, Windom, Tunon, and Kline (referred to as the "Dearman Group") seeking the appointment of the law firms of Shapiro, Haber & Urmy ("Shapiro") and Lerach, Coughlin, Stoia, Geller, Rudman & Robbins ("Lerach") as interim class counsel.

Plaintiff Corrales opposes this application on the grounds that it is improper and premature at this time. Further, Plaintiffs Adoure and Corrales ask that the Court instead set a schedule for the submittal of applications for a plaintiffs' steering committee.¹

Rule 23(g) says that the court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action. At the outset, it seems that

¹Additional plaintiffs outside the Dearman Group have likewise filed a Motion to Set Schedule for Filing Applications for Appointment to Plaintiffs' Steering Committee.

Rule 23(g) assumes a single class action and the appointment of interim counsel while a single motion for class certification is pending. Here, there are a myriad of putative class actions, each postured differently. Some are putative state only class actions while others are national class actions.

According to the comments to Rule 23(g), its purpose is to govern the manner in which a court will supervise the appointment of counsel to represent the class. Contrary to the Dearman Group's suggestion, it is not an organizational tool for the organization of multiple cases in an MDL proceeding. Indeed, the comments further provide that prior to the adoption of Rule 23(g), courts used Rule 23(a)(4) to examine the adequacy of class counsel. The standards developed by Rule 23(a)(4) have been incorporated into Rule 23(g) for the court's evaluation of counsel. Additionally, the comments note that Rule 23(g) will help prevent the reverse auction situation, which is disfavored by courts. The appointment of the Shapiro and Lerach as class counsel will not further any of the goals of Rule 23(g).

Shapiro and Lerach appear to suffer irreconcilable conflicts of interest. Shapiro and Lerach represent the plaintiffs in the *Dearman / Debiseglia* case, which are putative state only class actions (alleging a Florida class and a New York class) for claims for violation of Florida and New York's consumer protection statutes and unjust enrichment, causing them to have a fiduciary duty to represent the best interests of the Florida class and to simultaneously have a fiduciary duty to the New York class. To represent both such classes simultaneously appears to be impossible unless the laws of Florida are identical to the laws of New York. To make matters even worse, in the *Tunon* and *Kline* case, Shapiro represents plaintiffs seeking a Georgia state class action and a Massachusetts state class action, respectively, alleging only a claim for unjust enrichment, not alleging any claim for violation of a consumer protection statute. But, even this is not all. In

Windom, Shapiro represents a Wisconsin plaintiff alleging a putative national class action and alleging only a claim for unjust enrichment, again not alleging any claim for violation of a consumer protection statute.

The differences among these three cases alone appear to present conflicts that would prevent Shapiro and Lerach from acting as class counsel just in these cases, without even addressing the many other cases that are pending, for which Shapiro and Lerach do not represent the plaintiffs.

Nevertheless, absent a motion for class certification, which defines the class, the Court is not able to properly assess the adequacy of purported class counsel. Clearly, the more appropriate time for the submittal of interim class counsel applications is after a motion for class certification has been filed, so that the classes are defined and the Court can make an adequate assessment of the appropriateness of applicants for interim counsel.

The Dearman Group's application seems to be requesting appointment of Shapiro and Lerach as class counsel over all of the cases in this MDL, despite the fact that they are not counsel for a majority of the plaintiffs with cases pending before this Court. Notwithstanding the obvious conflicts presented by such an appointment, this application would likely result in the reverse auction situation, which Rule 23(g) seeks to avoid. Likewise, such an appointment does not further the Dearman Group's stated goal of organization, but merely unfairly and inappropriately removes other plaintiffs from the decision making process. The appointment of interim counsel to presumably act as class counsel for all of these matters, is not contemplated by Rule 23(g), nor it is appropriate.

Plaintiff Corrales suggests that the more appropriate request would have been for the Dearman Group's counsel to seek the appointment of a plaintiffs' steering committee. The appointment of a steering committee is an organizational tool most often used when there are

dissimilar interests and positions are present in multiparty litigation. *See* MANUAL FOR COMPLEX LITIGATION §10.221 (4th ed. 2005). The steering committee approach allows parties with such dissimilar interests representation in decision making, something the Dearman Group's application fails to do. Accordingly, Plaintiffs Adoure and Corrales now ask the Court to set forth a schedule by which interested parties may submit applications for membership on a plaintiffs' steering committee for the MDL proceeding.

In short, Plaintiff Corrales respectfully requests that the Dearman's Application for Appointment as Class Counsel be rejected at this time and that, instead, a schedule for filing applications for a plaintiffs' steering committee be set. Alternatively, if the Court wishes to consider applications for interim class counsel, Plaintiff Corrales requests additional time for the submittal of such applications.

Dated: January 20, 2006

Respectfully submitted,

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PROOF OF SERVICE

I am employed by the Kick Law Firm, APC, in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 660 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

On January 20, 2006, I served the foregoing document described as **PLAINTIFF CORRALES' RESPONSE TO THE DEARMAN GROUP'S APPLICATION FOR APPOINTMENT OF CLASS COUNSEL AND PLAINTIFF CORRALES' REQUEST FOR A SCHEDULE FOR SUBMITTAL OF APPLICATIONS FOR APPOINTMENT OF PLAINTIFFS' STEERING COMMITTEE** on the interested parties identified below by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

___ **BY PERSONAL SERVICE** – I delivered such envelope by hand delivery to the parties list listed on the attached service list.

___ **BY FEDERAL EXPRESS - NEXT DAY DELIVERY** -- I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier Federal Express in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be serve.

___ **FACSIMILE** – I transmitted it to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service, as indicated below. The facsimile was transmitted from my business address, using the fax machine whose number is 213-624-1589, at ____ approximately ____ . The document was transmitted by facsimile transmission and that the transmission was reported as complete and without error.

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I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this January 20, 2006.

/s/ Manuel Garcia
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SERVICE LIST

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